

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Leroy Leftwich, trustee of the statutory class
of next of kin to Cameron Leftwich,
decedent,

Plaintiff,

v.

Case No. 18-cv-1144 (JNE/BRT)
ORDER

County of Dakota, Caleb Kocher, Kent
Themmes, Cody Swanson, City of Eagan,
Jennifer Wegner, Brian Rundquist, and
Brian Rezny,

Defendants.

Leroy Leftwich, trustee of the statutory class
of next of kin to Cameron Leftwich,
decedent,

Plaintiff,

v.

Case No. 19-cv-393 (JNE/BRT)
ORDER

County of Dakota, Damion Giles, Caleb
Kocher, Kent Themmes, Bryan Olson, Cody
Swanson, City of Eagan, Roger New,
Jennifer Wegner, Brian Rundquist, and
Brian Rezny,

Defendants.

On October 27, 2016, Cameron Leftwich was arrested and transported to the Dakota County Jail by the City of Eagan Police Department. He died at the jail on October 28, 2016. Leroy Leftwich, trustee of the statutory class of next of kin to Cameron Leftwich, decedent, brought an action, Case No. 18-cv-1144 (JNE/BRT), against the County of Dakota, the City of Eagan, and several individuals under 42 U.S.C.



§ 1983 and state law for failure to provide adequate medical care, failure to train, and wrongful death. The pretrial scheduling order, which was issued on May 29, 2018, set October 29, 2018, as the deadline to file and serve motions to amend the pleadings and January 2, 2019, as the deadline to complete fact discovery. On January 2, 2019, Leroy Leftwich filed a Motion to Amend Scheduling Order to Extend Time and to Amend Complaint. The defendants opposed the motion. On January 22, 2019, the magistrate judge heard the motion and permitted the parties to submit supplemental memoranda.

After he submitted his supplemental memorandum and before the defendants submitted their supplemental memorandum, Leroy Leftwich, trustee of the statutory class of next of kin to Cameron Leftwich, decedent, brought another action, Case No. 19-cv-393 (JNE/BRT), under 42 U.S.C. § 1983 and state law for failure to provide adequate medical care, failure to train, and wrongful death. He named each defendant in Case No. 18-cv-1144 as a defendant in Case No. 19-cv-393. Leroy Leftwich also named three additional individuals as defendants in Case No. 19-cv-393.

In early March 2019, the defendants in Case No. 19-cv-393 jointly filed a motion to dismiss. The next day, in Case No. 18-cv-1144, Leroy Leftwich filed a motion to consolidate the two actions or, in the alternative, to amend.

In an Order dated April 9, 2019, and an Amended Order dated April 10, 2019, the magistrate judge denied Leroy Leftwich's Motion to Amend Scheduling Order to Extend Time and to Amend Complaint in Case No. 18-cv-1144. Leroy Leftwich objected, and the defendants in Case No. 18-cv-1144 responded. The Court has reviewed the record. Based on that review, the Court affirms the April 9 and 10 Orders because they are

neither clearly erroneous nor contrary to law. *See* 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); D. Minn. LR 72.2(a).

In a Report and Recommendation dated May 14, 2019, the magistrate judge recommended that the defendants' motion to dismiss in Case No. 19-cv-393 be granted and that Leroy Leftwich's motion to consolidate or, in the alternative, to amend in Case No. 18-cv-1144 be denied. Leroy Leftwich objected. The magistrate judge filed an Amended Report and Recommendation.¹ Leroy Leftwich reiterated his objections. The defendants in each case jointly responded. The Court has conducted a de novo review of the record. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); D. Minn. LR 72.2(b)(3). Based on that review, the Court modifies the recommended disposition [Docket Nos. 88 and 90 in Case No. 18-cv-1144; Docket Nos. 35 and 39 in Case No. 19-cv-393]. Instead of dismissing Case No. 19-cv-393, the Court stays it pending the resolution of Case No. 18-cv-1144. *See Ritchie Capital Mgmt., L.L.C. v. BMO Harris Bank, N.A.*, 868 F.3d 661, 664-66 (8th Cir. 2017). The Court accepts the recommendation to deny Leroy Leftwich's motion to consolidate or, in the alternative, to amend in Case No. 18-cv-1144.

¹ The Amended Report and Recommendation was issued to correct the Report and Recommendation's misstatement that “[t]he above-captioned lawsuits are related to the tragic death by suicide of Leroy Leftwich.” The Amended Report and Recommendation states that the actions “are related to the tragic death by suicide of Cameron Leftwich.” The Court acknowledges the Amended Report and Recommendation’s erroneous reference to “Plaintiff’s suicide.”

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Leroy Leftwich's objections [Docket No. 86 in Case No. 18-cv-1144] are OVERRULED.
2. The Orders dated April 9 and 10, 2019 [Docket Nos. 80 and 82 in Case No. 18-cv-1144] are AFFIRMED.
3. Leroy Leftwich's motion to consolidate or, in the alternative, to amend [Docket No. 61 in Case No. 18-cv-1144] is DENIED.
4. Defendants' Joint Motion to Dismiss [Docket No. 11 in Case No. 19-cv-393] is DENIED.
5. Case No. 19-cv-393 (JNE/BRT) is STAYED pending the resolution of Case No. 18-cv-1144 (JNE/BRT).

Dated: July 3, 2019

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge